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TELEKOM MALAYSIA BHD v. OBNET SDN BHD

FEDERAL COURT, PUTRAJAYA
ABDUL RAHMAN SEBLI CJ (SABAH & SARAWAK)
HASNAH MOHAMMED HASHIM FCJ
AB KARIM AB JALIL FCJ
B [CIVIL APPEAL NO: 02(f)-97-11-2022(W)]
16 OCTOBER 2024

Abstract – *To ensure minimal intervention or ideally no intervention at all by the courts, the Arbitration Act 2005 ('Act') sets out the procedures which must be followed and complied with not only by the arbitrator but also by the parties involved in an arbitration. Under the Act, an award by an arbitrator whether interim or final must be in writing giving reasons for its decision. Only then can the arbitrator be entitled to proceed with the determination of quantum. The Act excludes the possibility of the arbitrator delivering an oral award. Undeniably, the arbitrator is the master of the arbitration proceedings and can decide to bifurcate the proceedings or otherwise. However, the arbitrator must carry out his functions and duties as expressly required under the Act. Any failure to comply is a violation of the Act and will taint any decision made by the arbitrator.*

ARBITRATION: *Award – Enforceability – Oral pronouncement by arbitral tribunal in bifurcated arbitration proceedings – Whether amounted to decision on liability – Whether decision on substance of dispute – Whether arbitral tribunal and parties entitled to proceed with determination of quantum – Whether award must be made in writing – Whether form and contents of award must satisfy requirements under s. 33 of Arbitration Act 2005*

CIVIL PROCEDURE: *Injunction – Interim injunction – Application for – Arbitration proceedings – Whether injunction necessary to restrain party from taking further steps to proceed with arbitration proceedings – Whether arbitration proceedings ought to be stayed pending issuance of written award*

This appeal raised questions about the significance and the enforceability of oral pronouncements by an arbitral tribunal in bifurcated arbitration proceedings governed by the Arbitration Act 2005 ('Arbitration Act') and KLRCA Arbitration Rules, now known as the AIAC Arbitration Rules 2021 ('AIAC Rules'). The Selangor State Government ('State Government') awarded a project to the respondent, Obnet Sdn Bhd ('Obnet') to connect all State Government departments, statutory bodies, municipals/local authorities, Government-linked companies and Government agencies *via* a high speed broadband network ('SELNET project'). Two agreements were executed between Obnet and the State Government ('SELNET agreements').

Obnet appointed the appellant, Telekom Malaysia Berhad ('Telekom'), as an independent contractor to design and build a network infrastructure for the SELNET project. This resulted in a Metro Ethernet Services Agreement ('Metro-E Agreement') executed between Obnet and Telekom. The Metro-E Agreement contained an arbitration agreement clause stipulating that any disputes arising out of or in connection with the Metro-E Agreement shall be referred to arbitration under the KLRCA Rules. Unfortunately, a dispute arose between Obnet and the State Government regarding the provision of sites under the SELNET project which resulted in the termination of the SELNET agreements. The Metro-E Agreement with Telekom was also terminated. Unhappy with the termination, Obnet commenced arbitration proceedings against Telekom, alleging, *inter alia*, that Telekom had unlawfully interfered with and used confidential information obtained from the SELNET project to provide its own network services to the State Government. This ultimately resulted in the State Government terminating the SELNET agreements. Telekom counterclaimed and claimed for the sums due and owing by Obnet under the Metro-E Agreement. Parties referred the disputes to arbitration. The arbitrator decided to bifurcate the arbitration proceedings, that was, firstly, the determination on the issue of liability, and thereafter once liability had been established, he would hear and determine the issue of damages in respect of the claim and/or the counterclaim. Four years after the arbitration commenced, the arbitrator orally informed the parties that he allowed Obnet's claim and Telekom's counterclaim. The arbitrator notified the parties that he would not publish a written award at this stage. Telekom, however, requested for an award to be published in accordance with ss. 2 and 33 of the Arbitration Act, and Article 34 of the UNCITRAL Arbitral Rules (adopted by the KLRCA Rules). Obnet objected to Telekom's request and took the position that: (i) the oral decision was not meant to be an award. It was merely an interlocutory order/ruling made in the course of the arbitration proceedings; and (ii) that the arbitrator, being the master of its procedure, had discretion on whether to issue an interim award with respect to liability or otherwise. Dissatisfied with the approach taken by the arbitrator, Telekom filed an originating summons ('OS') at the High Court seeking, amongst others, for a declaration that the oral decision in respect of Telekom's and the Obnet's liability was invalid. The High Court, in dismissing the OS, held that, *inter alia*, by virtue of s. 21 of the Arbitration Act, the arbitrator was vested with the discretion to determine the manner the arbitration proceedings was to be conducted. The Court of Appeal agreed with the High Court and affirmed its decision. Telekom obtained leave to appeal on the following question of law: where an arbitral tribunal directs proceedings be bifurcated (with liability to be heard and decided first followed by determination of quantum, if liability is established), whether an oral pronouncement by the arbitral tribunal on

A liability is sufficient to: (i) amount to a decision on liability; and (ii) entitle the arbitral tribunal and parties to proceed with a determination of quantum, in a case where the arbitration is governed by (a) the Arbitration Act; and (b) the AIAC Rules.

B **Held (allowing appeal)**
Per Hasnah Mohammed Hashim FCJ delivering the judgment of the court:

(1) The provision of s. 2 of the Arbitration Act is plain and unambiguous that is, the decision of an arbitrator on the 'substance of the dispute' constitutes an award whether it is a final, interim or partial award and any award on costs or interest. An award can either be final, interim or partial, and irrespective of the type of award, the award must necessarily have the effect of finality on the issue it disposes. Section 33(1) of the Arbitration Act mandates that the award must be made in writing. If the award is not in writing, it cannot be enforced, set aside or even form the basis for reference of law. In this case, on the facts the arbitrator had decided on liability which meant that he had decided issues relating to a substantive dispute on liability. As far as liability was concerned, it was final and binding. (paras 31-34)

(2) There is no concept of an arbitral tribunal delivering a decision on the substance of dispute, in any form other than an award. An arbitral tribunal's decision on liability is a decision on the substance of the dispute as it determines a substantive issue between parties to the arbitration, and the parties' legal rights and obligations. Any other interpretation would be absurd. The arbitrator's decision to bifurcate the proceedings did not, in any manner, absolve him from the provisions of the Act. Thus, he must comply with the provisions of the Act mandating him as an arbitrator that when he delivers his decision on liability that decision is an award under which can be enforced under s. 38 of the Act. Article 34 UNCITRAL Arbitration Rules provides that the arbitral tribunal may make separate awards on different issues at different times. However, awards must be made in writing and shall be final and binding on the parties. The arbitral tribunal shall state the reasons upon which the award is based unless the parties have agreed that no reasons are to be given. Therefore, any decision of an arbitral tribunal, in this case, the arbitrator on the substance of a dispute which did not comply with the mandatory requirements of s. 33 of the Act must be regarded as invalid. (para 36)

(3) Section 33(1) of the Arbitration Act excludes the possibility of the arbitrator making an oral award. An award other than in the form prescribed in the section would necessarily be invalid. The Arbitration Act does not recognise an oral award as being an award as there is no expressed provision enabling an arbitrator to give an oral decision on matters which are the substance of the dispute. Thus, a decision on

matters which are the substance of the dispute must be an award and that award must be in writing and duly signed. The form and contents of the award must satisfy the requirements as provided under s. 33 of the Arbitration Act notwithstanding the decision by the arbitrator to bifurcate the proceedings. (para 37)

(4) Section 2 of the Arbitration Act expressly excludes 'interlocutory orders' from the definition of awards. 'Interlocutory orders' by the arbitral tribunal deal with procedural issues such as scheduling hearings, security for costs and discovery *etc*. An award must be interpreted to mean a 'final determination of a particular issue or claim in the arbitration and must be contrasted with orders and directions which address the procedural aspects in an arbitration proceeding'. The oral decision by the arbitrator in the appeal herein was clearly not an interlocutory order but a final determination on liability in the dispute between Telekom and Obnet. (para 40)

(5) To ensure minimal intervention or ideally no intervention at all by the courts, the Arbitration Act sets out the procedures which must be followed and complied with not only by the arbitrator but also by the parties involved in the arbitration. Under the Arbitration Act, an award by an arbitrator, whether interim or final, must be in writing giving reasons for its decision. The arbitrator is required to give a sufficiently reasoned award to demonstrate the reasons for the decision and more importantly, as a prerequisite for any appeal against the arbitral tribunal's decision. With a written award, there would be certainty for the parties to proceed with the next stage of the arbitration. Thus, any failure to comply was a violation of the Act and would taint any decision made by an arbitrator. Without a valid decision on liability, the parties to the dispute and the arbitral tribunal cannot proceed with the assessment of damages. The Arbitration Act does not give the discretion to defer or delay publication of an award. Furthermore, the publication of an award on liability is necessary to ensure the arbitral tribunal is *functus officio* on the issue of liability. (paras 43, 45 & 46)

(6) Generally, the courts would not intervene in arbitral proceedings which is the domain of the arbitrator. There was also no requirement under the Arbitration Act and the Rules that empowers an arbitral tribunal to mimic or adopt court procedures. The arbitrator must therefore, at all times, comply strictly with the provisions of the Arbitration Act. Having found that the arbitrator's decision on liability amounted to a decision on the 'substance of the dispute,' the High Court and the Court of Appeal ought to have held the decision must be published in the form of an award as mandatorily required by ss. 2 and 33 of the AA for it to be valid and have any legal effect. (paras 43 & 44)

A **(7)** The arbitrator had delivered his decision on liability and must provide as mandated by the Act a written award before commencing the assessment of damages. Without an award on liability, it would be a plain denial of Telekom's rights under the Arbitration Act. An interim injunction was, therefore, necessary to restrain Obnet from taking any B further steps to proceed with the arbitration proceedings and that the arbitration proceedings be stayed pending the issuance of a written award. (para 52)

Bahasa Melayu *Headnotes*

C Rayuan ini menimbulkan persoalan tentang kepentingan dan kebolehkuatkuasaan pengumuman lisan oleh tribunal timbang tara dalam prosiding timbang tara bercabang yang dikawal oleh Akta Timbang Tara 2005 ('Akta Timbang Tara') dan Peraturan Timbang Tara KLRCA, yang kini dikenali sebagai Peraturan Timbang Tara AIAC 2021 ('Peraturan AIAC'). D Kerajaan Negeri Selangor ('Kerajaan Negeri') mengawardkan projek kepada responden, Obnet Sdn Bhd ('Obnet') untuk menghubungkan semua jabatan Kerajaan Negeri, badan berkanun, majlis perbandaran/pihak berkuasa tempatan, syarikat berkaitan kerajaan dan agensi kerajaan melalui rangkaian jalur lebar berkelajuan tinggi ('Projek SELNET'). Dua perjanjian dimeterai antara Obnet dan Kerajaan Negeri ('perjanjian-perjanjian SELNET'). Obnet E melantik perayu, Telekom Malaysia Berhad ('Telekom') sebagai kontraktor bebas untuk mereka bentuk dan membina infrastruktur rangkaian untuk projek SELNET. Ini menghasilkan Perjanjian Perkhidmatan Metro Ethernet ('Perjanjian Metro-E') yang dilaksanakan antara Obnet dan Telekom. Perjanjian Metro-E mengandungi klausa perjanjian timbang tara yang F menetapkan bahawa apa-apa pertikaian yang timbul daripada atau berkaitan dengan Perjanjian Metro-E hendaklah dirujuk pada timbang tara bawah Peraturan KLRCA. Malangnya, pertikaian timbul antara Obnet dan Kerajaan Negeri berhubung penyediaan tapak bawah projek SELNET yang mengakibatkan penamatan perjanjian SELNET. Perjanjian Metro-E dengan G Telekom juga ditamatkan. Tidak berpuas hati dengan penamatan itu, Obnet memulakan prosiding timbang tara terhadap Telekom, dengan mendakwa, antara lain, bahawa Telekom telah campur tangan secara tidak sah dan menggunakan maklumat sulit yang diperoleh daripada projek SELNET untuk menyediakan perkhidmatan rangkaiannya sendiri kepada Kerajaan Negeri. Ini akhirnya menyebabkan Kerajaan Negeri menamatkan perjanjian H SELNET. Telekom menuntut balas dan menuntut jumlah terhutang oleh Obnet bawah Perjanjian Metro-E. Pihak-pihak merujuk pertikaian pada timbang tara. Penimbang tara memutuskan untuk mencabangkan prosiding timbang tara, iaitu, pertama, penentuan mengenai isu liabiliti, dan selepas itu apabila liabiliti telah ditetapkan, beliau akan mendengar dan menentukan isu I ganti rugi berkenaan dengan tuntutan dan/atau tuntutan balas. Empat tahun selepas timbang tara dimulakan, penimbang tara secara lisan memaklumkan pihak-pihak bahawa beliau membenarkan tuntutan Obnet dan tuntutan balas Telekom. Penimbang tara memaklumkan pada pihak-pihak bahawa beliau

tidak akan mengeluarkan award bertulis pada peringkat ini. Telekom, walaubagaimanapun, meminta award ditulis mengikut ss. 2 dan 33 Akta Timbang Tara, dan Perkara 34 Peraturan Timbang Tara UNCITRAL (diterima oleh Peraturan KLRCA). Obnet membantah permintaan Telekom dan mengambil pendirian bahawa: (i) keputusan lisan itu tidak dimaksudkan sebagai award. Itu hanyalah perintah/keputusan interlokutori yang dibuat semasa prosiding timbang tara; dan (ii) bahawa penimbang tara, sebagai tuan prosedur, mempunyai budi bicara sama ada untuk mengeluarkan award interim berkenaan liabiliti atau sebaliknya. Tidak berpuas hati dengan pendekatan yang diambil oleh penimbang tara, Telekom memfailkan saman pemula ('SP') di Mahkamah Tinggi memohon, antara lain, untuk perisytiharan bahawa keputusan lisan berkenaan dengan liabiliti Telekom dan Obnet tidak sah. Mahkamah Tinggi, dalam menolak SP, berpendapat, antara lain, menurut kuasa s. 21 Akta Timbang Tara, penimbang tara diberi budi bicara untuk menentukan cara prosiding timbang tara dijalankan. Mahkamah Rayuan bersetuju dengan Mahkamah Tinggi dan mengesahkan keputusannya. Telekom mendapat kebenaran untuk merayu atas persoalan undang-undang berikut: di mana tribunal timbang tara mengarahkan prosiding dicabangkan (dengan liabiliti didengar dan diputuskan terlebih dahulu diikuti dengan penentuan kuantum, jika liabiliti ditetapkan), sama ada pernyataan lisan oleh tribunal timbang tara tentang liabiliti adalah mencukupi untuk (i) berjumlah keputusan mengenai liabiliti; dan (ii) memberi hak pada tribunal timbang tara dan pihak-pihak untuk meneruskan penentuan kuantum, dalam kes di mana timbang tara dikawal oleh (a) Akta Timbang Tara; dan (b) Peraturan AIAC.

Diputuskan (membenarkan rayuan)
Oleh Hasnah Mohammed Hashim HMP menyampaikan penghakiman mahkamah:

(1) Peruntukan s. 2 Akta Timbang Tara adalah terang dan jelas iaitu, keputusan penimbang tara tentang 'bahan pertikaian' membentuk award sama ada award muktamad, interim atau separa dan apa-apa award atas kos atau faedah. Sesuatu award boleh sama ada muktamad, interim atau separa, dan tanpa mengira jenis award, award itu semestinya mempunyai kesan muktamad terhadap isu yang dilupuskan. Seksyen 33(1) Akta Timbang Tara memberi mandat bahawa award mesti dibuat secara bertulis. Jika award tidak dibuat secara bertulis, award tidak boleh dikuatkuasakan, diketepikan malah tidak boleh menjadi asas untuk rujukan undang-undang. Dalam kes ini, berdasarkan fakta penimbang tara telah memutuskan liabiliti bermaksud bahawa beliau telah memutuskan isu yang berkaitan dengan pertikaian substantif mengenai liabiliti. Setakat liabiliti berkenaan, ini adalah muktamad dan mengikat.

(2) Tiada konsep tribunal timbang tara yang menyampaikan keputusan mengenai bahan pertikaian dalam sebarang bentuk selain daripada award. Keputusan tribunal timbang tara tentang liabiliti ialah keputusan mengenai bahan pertikaian kerana itu menentukan isu substantif antara pihak-pihak dalam timbang tara, dan pihak-pihak tersebut mempunyai hak dan kewajipan undang-undang. Sebarang tafsiran lain tidak masuk akal. Keputusan penimbang tara untuk mencabangkan prosiding tidak, dalam apa-apa cara, membebaskannya daripada peruntukan Akta. Oleh itu, beliau mesti mematuhi peruntukan Akta yang mewajibkannya sebagai penimbang tara bahawa apabila beliau menyampaikan keputusan tentang liabiliti keputusan itu adalah award yang boleh dikuatkuasakan bawah s. 38 Akta. Perkara 34 Peraturan Timbang Tara UNCITRAL memperuntukkan bahawa tribunal timbang tara boleh membuat award berasingan tentang isu yang berbeza pada setiap masa. Walau bagaimanapun, award mesti dibuat secara bertulis dan adalah muktamad dan mengikat pihak-pihak. Tribunal timbang tara hendaklah menyatakan sebab-sebab yang menjadi asas award melainkan pihak-pihak telah bersetuju bahawa tiada alasan yang perlu diberikan. Oleh itu, apa-apa keputusan tribunal timbang tara, dalam kes ini, keputusan penimbang tara tentang bahan pertikaian yang tidak mematuhi keperluan mandatori s. 33 Akta mesti dianggap sebagai tidak sah.

(3) Seksyen 33(1) Akta Timbang Tara tidak termasuk kemungkinan penimbang tara membuat award secara lisan. Award selain daripada bentuk yang ditetapkan dalam bahagian itu semestinya tidak sah. Akta Timbang Tara tidak mengiktiraf award secara lisan sebagai award kerana tiada peruntukan nyata yang membolehkan penimbang tara memberi keputusan lisan tentang perkara yang menjadi bahan pertikaian. Oleh itu, keputusan berkaitan perkara yang menjadi intipati pertikaian mestilah satu award dan award itu mestilah secara bertulis dan ditandatangani dengan sewajarnya. Bentuk dan kandungan award mesti memenuhi keperluan seperti yang diperuntukkan bawah s. 33 Akta Timbang Tara walau apa pun keputusan penimbang tara untuk mencabangkan prosiding.

(4) Seksyen 2 Akta Timbang Tara secara jelas mengecualikan 'perintah interlokutori' daripada takrifan award. 'Perintah interlokutori' oleh tribunal timbang tara menangani isu prosedur seperti penjadualan pendengaran, keselamatan untuk kos dan penemuan dan sebagainya. Award mesti ditafsirkan sebagai 'penentuan muktamad bagi isu atau tuntutan tertentu dalam timbang tara dan mesti dibezakan dengan perintah dan arahan yang menangani aspek prosedur dalam prosiding timbang tara'. Keputusan lisan oleh penimbang tara dalam rayuan di sini jelas bukan perintah interlokutori tetapi penentuan muktamad tentang liabiliti dalam pertikaian antara Telekom dan Obnet.

(5) Demi memastikan campur tangan yang minimum atau secara idealnya tiada campur tangan sama sekali oleh mahkamah, Akta Timbang Tara menetapkan prosedur yang mesti diikuti dan dipatuhi bukan sahaja oleh penimbang tara tetapi juga oleh pihak-pihak yang terlibat dalam timbang tara. Bawah Akta Timbang Tara, award oleh penimbang tara sama ada interim atau muktamad mestilah secara bertulis dengan memberikan sebab-sebab keputusannya. Penimbang tara dikehendaki memberikan award yang cukup munasabah untuk menunjukkan sebab-sebab untuk keputusan itu dan yang lebih penting, sebagai prasyarat untuk apa-apa rayuan terhadap keputusan tribunal timbang tara. Dengan award secara bertulis, akan ada kepastian bagi pihak-pihak untuk meneruskan peringkat timbang tara yang seterusnya. Oleh itu, kegagalan untuk mematuhi adalah melanggar Akta dan akan mencemarkan apa-apa keputusan yang dibuat oleh penimbang tara. Tanpa keputusan sah berkaitan liabiliti, pihak-pihak dalam pertikaian dan tribunal timbang tara tidak boleh meneruskan penilaian ganti rugi. Akta Timbang Tara tidak memberikan budi bicara untuk menangguhkan pengeluaran award. Tambahan pula, pengeluaran award bertulis tentang liabiliti adalah perlu untuk memastikan tribunal timbang tara berfungsi secara *functus officio* dalam isu liabiliti.

(6) Secara amnya, mahkamah tidak akan campur tangan dalam prosiding timbang tara yang adalah lapangan penimbang tara. Juga tiada keperluan bawah Akta Timbang Tara dan Peraturan AIAC yang memberi kuasa pada tribunal timbang tara untuk meniru atau menerima pakai prosedur mahkamah. Oleh itu, penimbang tara mesti pada setiap masa mematuhi dengan ketat peruntukan-peruntukan Akta Timbang Tara. Setelah mendapati keputusan penimbang tara mengenai liabiliti berjumlah keputusan mengenai 'bahan pertikaian', Mahkamah Tinggi dan Mahkamah Rayuan sepatutnya memutuskan keputusan itu mesti diterbitkan secara bertulis seperti yang dikehendaki secara mandatori oleh ss. 2 dan 33 Akta Timbang Tara agar adalah sah dan mempunyai apa-apa kesan undang-undang.

(7) Penimbang tara telah menyampaikan keputusan beliau tentang liabiliti dan mesti memberikan sebagai mandat oleh Akta, satu award bertulis sebelum memulakan penilaian ganti rugi. Tanpa award bertulis mengenai liabiliti, akan menjadi penafian jelas hak Telekom bawah AA. Oleh itu, injunksi interim adalah perlu untuk menghalang Obnet daripada mengambil sebarang langkah selanjutnya untuk meneruskan prosiding timbang tara dan bahawa prosiding timbang tara ditangguhkan sementara menunggu pengeluaran award bertulis.

Case(s) referred to:

Far East Holdings Bhd & Anor v. Majlis Ugama Islam Dan Adat Resam Melayu Pahang & Other Appeals [2018] 1 CLJ 693 FC ***(refd)***

Haris Fatillah Mohd Ibrahim v. Suruhanjaya Pilihan Raya Malaysia [2017] 3 CLJ 88 CA ***(refd)***

IMPSA (Malaysia) Sdn Bhd v. Bank Muamalat Malaysia Berhad & Ors [2011] CLJU 729; [2011] 1 LNS 729 HC ***(refd)***

Lee Eng Eow v. Mary Lee & Anor [1999] 3 CLJ 143 CA ***(refd)***

MCIS Insurance Bhd v. Associated Cover Sdn Bhd [2001] CLJU 322; [2001] 1 LNS 322 HC ***(refd)***

PT Asuransi Jasa Indonesia (Persero) v. Dexia Bank SA [2006] SGCA 41 ***(refd)***

Legislation referred to:

Arbitration Act 2005, ss. 2, 8, 21, 31(1), 32, 33(1), (3), 37, 38
Rules of Court 2012, O. 7 r. 3
UNCITRAL Arbitration Rules, art. 34

Other source(s) referred to:

Halsbury's Laws of Singapore, vol 2, p 83, para [20.095]

Law, Practice and Procedure of Arbitration, Datuk Professor Sundra Rajoo, 2nd edn, LexisNexis 2016, p 580

Sundra Rajoo, *UNCITRAL Model Law & Arbitration Rules, The Arbitration Act 2005 (Amended 2011 & 2018) and The AIAC Arbitration Rules 2018*, Sweet & Maxwell, 2018, pp 57 & 58

For the appellant - Lambert Rasa-Ratnam, Chan Mun Yew, Nicole Shieh E-Lyn & James Lau Jian Hui; M/s Lee Hishammuddin Allen & Glledhill
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[Editor's note: Appeal from Court of Appeal; Civil Appeal No: W-02(NCC)(A)-1753-11-2020 (overruled).]

Reported by Suhainah Wahiduddin

JUDGMENT

Hasnah Mohammed Hashim FCJ:

[1] The appeal raised questions about the significance and the enforceability of oral pronouncements by an arbitral tribunal in bifurcated arbitration proceedings governed by the Arbitration Act 2005 (AA 2005) and KLRCA Arbitration Rules, now known as the AIAC Arbitration Rules 2021 (Rules 2021). In particular, whether an oral decision by an Arbitral Tribunal on liability being a decision on the substance of a dispute is a valid decision within the meaning of the AA 2005. We heard oral submissions by all learned counsels representing the respective parties and at the end of those submissions we indicated that we needed time to consider the respective submissions. We have now reached our decision and what follows below are our deliberations on the issues raised and our reasons as to why we have so decided.

[2] On 3 November 2022, Telekom Malaysia Berhad (Telekom) obtained leave to appeal on the following question of law:

> Where an arbitral tribunal directs proceedings be bifurcated (with liability to be heard and decided first followed by determination of quantum, if liability is established), whether an oral pronouncement by the arbitral tribunal on liability is sufficient to (i) amount to a decision on liability and (ii) entitle the arbitral tribunal and parties to proceed with a determination of quantum, in a case where the arbitration is governed by:
>
> (a) the Arbitration Act 2005 (AA 2005); and
>
> (b) the KLRCA Arbitration Rules (AIAC Arbitration Rules 2021).

Factual Background

[3] In 2003, the Selangor State Government (the State Government) awarded a project to the respondent, Obnet Sdn Bhd (Obnet), to connect all State Government departments, statutory bodies, municipals/local authorities, Government-linked companies and Government agencies *via* a high-speed broadband network (SELNET project). Two agreements were executed between Obnet and the State Government, that is, the Selangor broadband internet access agreement dated 10 October 2003 and the subscription agreement dated 23 September 2005 (SELNET agreements).

[4] Obnet appointed Telekom, the appellant in this appeal, as an independent contractor to design and build a network infrastructure for the SELNET Project in 2007. This resulted in a Metro Ethernet Services Agreement (Metro-E agreement) executed between Obnet and Telekom on 19 April 2007. The Metro-E agreement contains an arbitration agreement clause stipulating that any disputes arising out of or in connection with the Metro-E agreement shall be referred to arbitration under the KLRCA Rules.

[5] Unfortunately, a dispute arose between Obnet and the State Government in 2008 regarding the provision of sites under the SELNET project which resulted in the termination of the SELNET agreements on 10 September 2009. The Metro-E agreement with Telekom was also terminated on 30 September 2009.

[6] Unhappy with the termination, Obnet commenced arbitration proceedings against Telekom alleging, *inter alia*, that Telekom had unlawfully interfered with and used confidential information obtained from the SELNET project to provide its own network services to the State Government. This ultimately resulted in the State Government terminating the SELNET agreements. Telekom counterclaimed and claimed for the sums due and owing by Obnet under the Metro-E agreement.

[7] Parties referred the disputes to arbitration and Dato Hj Azmel bin Haji Maamor, a retired judge, was appointed as the arbitrator (the arbitrator) to resolve the dispute between the parties. The arbitrator decided to bifurcate

A the arbitration proceedings, that is, firstly, the determination on the issue of liability, and thereafter once liability has been established, he will hear and determine the issue of damages in respect of the claim and/or the counterclaim. The mode of the hearing was reiterated by the arbitrator during the hearing on 25 October 2016 when evidence in respect of liability
B was heard.

[8] Almost four years after the arbitration commenced, on 26 June 2020, the arbitrator orally informed the parties that he allowed Obnet's claim and Telekom's counterclaim. The arbitrator notified the parties that he would not publish a written award at this stage. *Via* letters dated 6 July 2020 and 13
C July 2020, Telekom's solicitors wrote to the arbitrator requesting for an award to be published in accordance with ss. 2 and 33 of the Arbitration Act, and art. 34 of the UNCITRAL Arbitral Rules (adopted by the KLRCA Rules).

D **[9]** Obnet, however, objected to Telekom's request and took the position that:

(i) the oral decision was not meant to be an award. It is merely an interlocutory order/ruling made in the course of the arbitration proceedings; and

E (ii) that the arbitrator, being the master of its procedure, has discretion on whether to issue an interim award with respect to liability or otherwise.

[10] *Vide* letter dated 16 July 2020, the arbitrator notified the parties that there is no requirement for an award to be published at that juncture. On the last day of oral submissions on 4 February 2020, the arbitrator informed the
F parties that he would deliver its decision on liability on 16 April 2020. This was subsequently adjourned to 26 June 2020 due to the movement control order. On 26 June 2020, the arbitrator informed the parties orally that Obnet's claim and Telekom Malaysia's counterclaim were allowed. The arbitrator gave brief reasons for its decision and that an award on liability
G would not be published at this stage. Telekom's solicitors subsequently wrote to the Arbitral Tribunal on 6 July 2020 and 13 July 2020 requesting that an award on liability be published in accordance with ss. 2 and 33 of the AA 2005 and art. 34 of the UNCITRAL Arbitration Rules. Obnet, however, objected to Telekom's request. In their letter dated 9 July 2020, they took
H the position that the oral decision was not meant to be an award and was merely an interlocutory order/ruling made in the course of the arbitral proceedings.

[11] On 16 July 2020, the arbitrator informed the parties that there is no requirement for an award to be published and that the practice in the High
I Court should be followed, where a written judgment is only published at the conclusion of the hearing on quantum. Obnet's solicitors subsequently wrote to the arbitral tribunal to request for directions in respect of the hearing on the assessment of damages and for hearing dates to be fixed.

Decision Of The High Court And The Court Of Appeal

[12] Dissatisfied with the approach taken by the arbitrator, Telekom filed an Originating Summons No. WA-24NCC(ARB)-22-07/2020 (OS) at the Kuala Lumpur High Court seeking, amongst others, for:

(i) a declaration that the oral decision in respect of Telekom's and the Obnet's liability is invalid;

(ii) an order to restrain Obnet from taking any further steps to proceed with the arbitration proceedings between the parties until the arbitral tribunal duly publishes an award on its determination on the issue of liability of the parties in respect of the claim and counterclaim;

(iii) an interim injunction to restrain Obnet from taking any further steps to proceed with the arbitration proceedings pending the disposal of the OS; and

(iv) alternatively, an order that the arbitration proceedings be stayed pending the issuance of a written award in respect of liability by the arbitral tribunal.

[13] After hearing arguments, the learned High Court Judge dismissed the OS. On the failure by Telekom to state the relevant provisions in the intitulement of the OS, Her Ladyship was of the view that the failure to state ss. 2 and 3 of the Arbitration Act in the intitulement was a mere irregularity and not a nullity. Obnet was not at all taken by surprise as the said sections were stated and referred to in the body of the OS, namely, in prayers (2) and (4) of the OS. Further, Obnet failed to demonstrate that they were prejudiced or that failure to state the relevant provisions in the intitulement caused any miscarriage of justice. She explained in her grounds of judgment:

> [28] In this instant case although sections 2 and 3 of the Arbitration Act were not stated in the intitulement, this court is of the view the Defendant is not at all taken by surprise because the said sections are stated and referred to in the body of the OS, namely, in prayer (2) and (4) of the OS. Importantly, the Defendant did not demonstrate that they are being prejudiced by the Plaintiffs failure to state both the said sections in the intitulement or that it has caused a miscarriage of justice.

[14] In respect of Telekom's complaint that the arbitrator failed to publish a written award in respect of the oral decision, the High Court Judge opined that the OS as it is worded had not pleaded any cause of action against the Obnet as required by O. 7 r. 3 of the Rules of Court 2012 (ROC). Furthermore, Telekom had sought injunctive relief against Obnet. Her Ladyship observed that it is trite law that injunction is not a cause of action (Re: *Lee Eng Eow v. Mary Lee & Anor* [1999] 3 CLJ 143; *IMPSA (Malaysia) Sdn Bhd v. Bank Muamalat Malaysia Berhad & Ors* [2011] CLJU 729; [2011] 1 LNS 729). The OS failed to state a reasonable cause of action against Obnet and, therefore, must be dismissed.

[15] For completeness, the learned High Court Judge discussed the merits of the OS. Prayer 1 of the OS sought a declaration that the decision given by the arbitrator orally was invalid. Her Ladyship cited the case of *Haris Fatillah Mohd Ibrahim v. Suruhanjaya Pilihan Raya Malaysia* [2017] 3 CLJ 88, where the Court of Appeal held that the most important feature of a declaratory judgment is that it is a discretionary remedy and the court must therefore carefully consider the circumstances and terms upon which the relief is sought.

[16] The learned High Court Judge further articulated in her grounds of judgment that by virtue of s. 21 of the AA 2005, the arbitrator is vested with the discretion to determine the manner the arbitration proceedings is to be conducted. There was no evidence before the court to indicate that when the arbitrator decided to bifurcate the arbitration proceedings, the arbitrator must deliver a written award after the hearing on liability was completed.

[17] Telekom requested for the award on liability to be made on the day the arbitrator delivered his oral decision on liability on 26 June 2020 followed by a subsequent request in writing sometime in July 2020. The ruling to bifurcate the arbitration proceedings was made in September 2016 when the proceedings commenced. The High Court Judge accepted and agreed with the arguments advanced by Obnet that Telekom could not insist on a written award to be delivered on the issue of liability as there was no complaint that the decision of the arbitrator to decide on the issue of liability first and published one final award after completion of the assessment of damages has breached the rule of natural justice.

[18] Her Ladyship further explained that the Act does not require the arbitrator to immediately publish his award after determining the issue of liability. Therefore, she concluded that Telekom is estopped from insisting for the written award of the oral decision. The issue of estoppel cannot be raised to negate the operation of a statutory provision as the Act does not prohibit the issuance of one final award at the end of the arbitration proceedings.

[19] The Court of Appeal agreed with the High Court Judge and affirmed the High Court Judge's decision. Unfortunately, there are no written grounds of judgment of the Court of Appeal. On the application of Telekom Malaysia, the Court of Appeal on 15 June 2022 granted an Erinford injunction to restrain Obnet from taking any steps in the arbitral proceeding pending the disposal of Telekom application for leave to appeal and the appeal, if leave is granted.

Our Analysis And Determination

Whether An Oral Decision Given By The Arbitrator Is An Award

[20] In this appeal, the central issue for our determination is whether the oral decision given by the arbitrator is an award as envisaged under the AA 2005. On the facts, the arbitrator had decided on liability and found that Obnet had proven its case and Telekom had proven its counterclaim. However, having decided on liability, the arbitrator intends to publish one final award after the conclusion of the hearing on damages following the practice of the civil courts.

[21] The AA 2005 is based on the model law on international commercial arbitration described as the model law reforming the law relating to domestic arbitration as well as international arbitration extending to the recognition and enforcement of awards and related matters.

[22] Section 2 of the AA 2005 defined "award" as being:

> ... a decision of the arbitral tribunal on the substance of the dispute and includes any final, interim or partial award and any award on costs or interest but does not include interlocutory orders ...

[23] Under s. 2 of the AA 2005 there can only be two types of decisions that can be delivered by an arbitral tribunal, that is:

> (a) a decision on the substance of dispute – which constitutes an award and must be delivered in the form prescribed for an award; or
>
> (b) a decision on procedural or interlocutory matters.

[24] The definition of an award under s. 2 of the AA 2005 extends to a decision on the substance of the dispute, whether it is made as a final, interim or partial decision. The definition of an award under s. 2 of the AA 2005 must be read with s. 33 of the same Act mandating the form and content of an award:

> (1) An award shall be made in writing and subject to subsection (2) shall be signed by the arbitrator.
>
> (2) In arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall be sufficient provided that the reason for any omitted signature is stated.
>
> (3) An award shall state the reasons upon which it is based, unless:
>
> (a) the parties have agreed that no reasons are to be given; or
>
> (b) the award is an award on agreed terms under section 32.
>
> (4) An award shall state its date and the seat of arbitration as determined in accordance with section 22 and shall be deemed to have been made at that seat.

A (5) After an award is made, a copy of the award signed by the arbitrator in accordance with subsections (1) and (2) shall be delivered to each party.

(6) Subject to subsection (8), unless otherwise agreed by the parties, the arbitral tribunal may, in the arbitral proceedings before it, award simple or compound interest from such date, at such rate and with such rest as the B arbitral tribunal considers appropriate, for any period ending not later than the date of payment of the whole or any part of:

(a) any sum which is awarded by the arbitral tribunal in the arbitral proceedings;

(b) any sum which is in issue in the arbitral proceedings but is paid C before the date of the award; or

(c) costs awarded or ordered by the arbitral tribunal in the arbitral proceedings.

(7) Nothing in subsection (6) shall affect any other power of an arbitral tribunal to award interest.

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(8) Where an award directs a sum to be paid, that sum shall, unless the award otherwise directs, carry interest as from the date of the award and at the same rate as a judgment debt.

[25] Section 31(1) of the AA 2005 expressly stipulates that an award must E be made in writing and further provides as stated under s. 33(3) of the same Act that an award shall state the reasons upon which it is based. The only exceptions are, if the parties agree that no reasons ought or need to be given or the award is an award on agreed terms under s. 32 of the AA 2005.

[26] The learned High Court Judge however, opined that since there is no F expressed provision in the Act as to when a written award is to be delivered, in particular where bifurcation of proceedings is adopted the arbitrator cannot be compelled to deliver his decision prior to the completion of the arbitration proceeding, which in this case would be until the completion of the assessment of damages. Therefore, in the absence of any provision in the G Act, the failure of an arbitrator to deliver one final award after the completion of the arbitration proceedings is not a violation of the Act. The Act does not have any restriction if the arbitrator decides to deliver an oral decision. Furthermore, the subject matter of the oral decision does not fulfil the criteria of an award in so far as the form and content as stipulated in s. 33 of the Act.

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[27] The learned judge further reasoned that it was premature for Telekom to even speculate that its rights would be infringed. Furthermore, Telekom did not raise any complaint before the arbitrator that they could not proceed with the hearing on quantum because there was no written award published I by the arbitrator.

[28] Her Ladyship was of the considered view that the continuation of the arbitration proceeding in relation to the quantum of damages would not be oppressive, vexatious and unconscionable. Restraining the arbitration proceeding would delay the hearing of the assessment of damages and the arbitration proceedings which commenced in 2016. Furthermore, there must be minimal intervention by the court as stipulated in the AA 2005. Premised on the reasons stated above, the equitable relief sought for injunction was refused. The burden is on Telekom to show special circumstances which warrant this court to exercise its discretion to grant a stay. Telekom failed to do so, and thus the application was dismissed.

[29] The pertinent question for determination before this court deals with a fundamental point of importance in an arbitration commenced under the AA 2005 and the Rules 2021. In essence, whether an oral decision by an Arbitral Tribunal on liability is a decision on the substance of a dispute is a valid decision within the meaning of the Act and the Rules.

[30] On 16 July 2020, the arbitrator informed the parties there was no requirement for an award to be published after he had delivered his oral decision on liability. The arbitrator opined that the practice in the High Courts should be followed, where a written judgment is only published at the conclusion of the hearing on quantum. The issue is whether to constitute a valid decision on the substance of a dispute, in this case, on liability, must the decision of the arbitral tribunal/arbitrator be delivered in the form of an 'award', within the meaning of s. 33 of the AA 2005.

[31] The provision of s. 2 of the AA 2005 is plain and unambiguous that is, the decision of an arbitrator on the "substance of the dispute" constitutes an award whether it is a final, interim or partial award and any award on costs or interest. However, as the law expressly provides it does not include interlocutory orders. Interlocutory orders by the arbitrator deal with procedural issues such as scheduling of hearings, security for costs, and discovery, *etc*. In his book UNCITRAL Model Law & Arbitration Rules, The Arbitration Act 2005 (Amended 2011 & 2018) and *The AIAC Arbitration Rules 2018* (Sweet & Maxwell 2018) pp. 57 and 58, Datuk Professor Sundra Rajoo explained that the definition of 'award' in s. 2 lays down the test to be employed by courts in ascertaining whether an arbitral tribunal's decision is an award, interlocutory order or otherwise. The important test is that the decision must relate to the substance of the dispute. The main purpose of the test is to distinguish awards from procedural orders. An award as defined under the Act must relate to the substantive legal rights and duties of the parties.

[32] Therefore, an order of a procedural nature is not an award as envisaged under the Act. An award can either be final, interim or partial, and, irrespective of the type of award, the award must necessarily have the

effect of finality on the issue it disposes. In the appeal before us the determinative issue decided by the arbitrator is that of the liability of the parties to the dispute.

[33] His Lordship KC Vohrah J (as he then was) in *MCIS Insurance Bhd v. Associated Cover Sdn Bhd* [2001] CLJU 322; [2001] 1 LNS 322; [2001] 2 MLJ 561 referred to *Halsbury's Laws of Singapore*, vol. 2 at p. 83, para [20.095] that an award is final in its whatever one might call the award. The relevant passage reads as follows:

> [20.095] 'Interim', 'partial' and 'interlocutory'
>
> The terms 'interim', 'partial' and 'interlocutory' have no statutory definition. All awards are final in their terms in that in so far as relating to the issues decided therein, they are final. In practice, the term 'interim award' is generally used to describe any award that is not final (last) award in the arbitration. Decisions on issues of the applicable proper law, time-bar defences, joinder of parties and arbitral jurisdiction have been described as interim awards, as have awards made on part of the claims only, either on the basis of admission or following a decision of a part only of the issues in dispute. The terms 'partial award' is sometimes used to describe awards on part of the claims only. An interlocutory award would normally be an award that deals with certain issues such as liability (being final on the issue) leaving quantum to be further assessed. Partial awards and interlocutory awards could also be termed 'interim awards'. An award dealing with all the issues in the claim and the counterclaim but leaving the issue of costs to be argued is nevertheless often termed an interim award.

[34] Section 33(1) of the AA 2005 mandates that the award must be made in writing. If the award is not in writing, it cannot be enforced, set aside or even form the basis for reference of law. In this case, on the facts the arbitrator has decided on liability which means that he has decided issues relating to a substantive dispute on liability. As far as liability is concerned, it is final and binding.

[35] The Singapore Court of Appeal in *PT Asuransi Jasa Indonesia (Persero) v. Dexia Bank SA* [2006] SGCA 41 held that the nomenclature or label used by the arbitral tribunal to describe its decision is irrelevant. What is important is whether the decision delivered by the arbitrator is a decision on the substance of the dispute. The words 'substance of the dispute' distinguish procedural and practical matters on the one hand and substantive matters affecting the rights of the parties on the other. It must be contrasted with orders and directions that address the procedural aspects of arbitration.

[36] Under the model law, there is no concept of an arbitral tribunal delivering a decision on the substance of a dispute, in any form other than an award. It is unarguable that an arbitral tribunal's decision on liability is a decision on the substance of the dispute as it determines a substantive issue

between parties to the arbitration, and the parties' legal rights and obligations. Any other interpretation would be absurd. The arbitrator's decision to bifurcate the proceedings does not in any manner absolve him from the provisions of the Act. Thus, he must comply with the provisions of the Act mandating him as an arbitrator that when he delivers his decision on liability that decision is an award under which can be enforced under s. 38 of the Act. The argument that it was not an award as the issue of quantum had yet to be determined is untenable. Article 34 of the UNCITRAL Arbitration Rules provides that the arbitral tribunal may make separate awards on different issues at different times. However, awards must be made in writing and shall be final and binding on the parties. The arbitral tribunal shall state the reasons upon which the award is based unless the parties have agreed that no reasons are to be given. Therefore, any decision of an arbitral tribunal, in this case, the arbitrator on the substance of a dispute which does not comply with the mandatory requirements of s. 33 of the Act must be regarded as being invalid.

[37] Section 33(1) of the AA 2005 excludes the possibility of the arbitrator making an oral award. An award other than in the form prescribed in the section will necessarily be invalid. Once again, we have to examine the provisions of the AA 2005. The AA 2005 does not recognise an oral award as being an award as there is no expressed provision enabling an arbitrator to give an oral decision on matters which are the substance of the dispute. Thus, a decision on matters which are the substance of the dispute must be an award and that award must be in writing and duly signed. The form and contents of the award must satisfy the requirements as provided under s. 33 of the AA 2005 notwithstanding the decision by the arbitrator to bifurcate the proceedings.

[38] Datuk Professor Sundra Rajoo in his book *Law, Practice and Procedure of Arbitration* (2nd edn, LexisNexis 2016) p. 580 said:

> Most arbitral institution rules do require the award to be in writing. The writing requirement has not given rise to any dispute in Malaysia and Singapore ... Conversely, no arbitral tribunal will attempt to render an oral award in the style of the court rendering its decision orally or reading out its judgment. The old common law rule which permitted oral awards is no longer applicable. The Arbitration Act 2005 does not apply to oral awards.

[39] He further explains in his book that the classification of an arbitral tribunal's decision as an award or otherwise is important as it will determine whether such a decision is enforceable or susceptible to intervention by the courts or whether it is binding on parties and the arbitral tribunal; and finally, the extent of which an arbitral tribunal can validly recall or vary such decision.

[40] Section 2 of the AA 2005 expressly excludes 'interlocutory orders' from the definition of awards. 'Interlocutory orders' by the arbitral tribunal deal with procedural issues such as scheduling hearings, security for costs, and discover, *etc*. An award must be interpreted to mean a final determination of a particular issue or claim in the arbitration and must be contrasted with orders and directions which address the procedural aspects in an arbitration proceeding. The oral decision by the arbitrator in the appeal before us is clearly not an interlocutory order but a final determination on liability in the dispute between Telekom and Obnet.

[41] Section 8 of the AA 2005 reads:

> No court shall intervene in matters governed by this Act, except where so provided in this Act.

[42] The statutory regime of the AA 2005 intends minimal intervention by the courts. Jeffery Tan FCJ delivering the majority judgment of the Federal Court in *Far East Holdings Bhd & Anor v. Majlis Ugama Islam Dan Adat Resam Melayu Pahang & Other Appeals* [2018] 1 CLJ 693; [2018] 1 MLJ 1 observed:

> The principle of minimal interference by the court, which is an ingrained aspect of the UNCITRAL Model Law on International Commercial Arbitration, is reflected in s. 8. That principle was accepted in *Perwira Bintang, Government Of The Lao People's Democratic Republic v. Thai-lao Lignite Co Ltd ("TLL"), A Thai Company & Anor* [2013] CLJU 83; [2013] 1 LNS 83; [2014] 2 AMR 375, *Ajwa For Food Industries, Taman Bandar Baru Masai Sdn Bhd. v. Dindings Corporations Sdn Bhd* [2010] 5 CLJ 83, *Rmarine Engineering (M) Sdn Bhd v. Bank Islam Malaysia Bhd* [2012] 7 CLJ 540, and Chain Cycle. The model law requires recognition of the principles of party autonomy, minimal court intervention and international harmonisation of laws.

[43] To ensure minimal intervention or ideally no intervention at all by the courts, the AA 2005 sets out the procedures which must be followed and complied with not only by the arbitrator but also by the parties involved in the arbitration. Under the AA 2005, an award by an arbitrator whether interim or final must be in writing giving reasons for its decision. Generally, the courts will not intervene in arbitral proceedings which is the domain of the arbitrator. There is also no requirement under the AA 2005 and the Rules 2021 that empowers an arbitral tribunal to mimic or adopt court procedures as what happened in this appeal before us. The arbitrator must, therefore, at all times comply strictly with the provisions of the AA 2005.

[44] We, therefore, agree with the arguments advanced by learned counsel for Telekom that having found that the arbitrator's decision on liability amounts to a decision on the "substance of the dispute", the High Court and Court of Appeal ought to have held the decision must be published in the form of an award as mandatorily required by ss. 2 and 33 of the AA 2005

for it to be valid and have any legal effect. The High Court and Court of Appeal erred in holding that the Act does not prescribe a timeline for an award to be published and that the arbitrator can publish an award on liability at the end of arbitral proceedings.

[45] After giving much consideration to this issue, we are satisfied that there is a good deal of substance in the argument put forward by learned counsel for Telekom that a decision on liability is a decision on the substance of the dispute and thus an award under the Act. We reiterate that the AA 2005 excludes the possibility of the arbitrator delivering an oral award. Undeniably, the arbitrator is the master of the arbitration proceedings and can decide to bifurcate the proceedings or otherwise. However, the provisions of the AA 2005 must be strictly complied with and the arbitrator must carry out his functions and duties as expressly required under the Act. The arbitrator is required to give a sufficiently reasoned award to demonstrate the reasons for the decision and more importantly, as a prerequisite for any appeal against the arbitral tribunal's decision. Further with a written award, there will be certainty for the parties to proceed with the next stage of the arbitration. Thus, any failure to comply is a violation of the Act and will taint any decision made by an arbitrator.

[46] Without a valid decision on liability, the parties to the dispute and the arbitral tribunal cannot proceed with the assessment of damages. The AA 2005 does not give the discretion to defer or delay publication of an award. Furthermore, the publication of an award on liability is necessary to ensure the arbitral tribunal is *functus officio* on the issue of liability.

[47] As alluded to earlier, the decision on the substance of the dispute must be published in the form of an award, as mandatorily required by ss. 2 and 33 of the AA 2005, for it to be valid and have any legal effect. The moment the arbitrator delivers his decision as what had transpired in this appeal before us, the arbitrator is *functus officio* on the issue of liability. Had the High Court Judge carefully examined the provisions of the AA 2005, she could not have concluded that an arbitrator can deliver an oral decision.

[48] In conclusion, and based on the reasons we have articulated, the oral pronouncement made by the arbitrator on liability is the final determination on liability. Henceforth, the arbitrator must comply with the requirements of the AA 2005 and must publish a written award.

Injunction

[49] Injunctions can be granted to restrain arbitration in situations where:

> It does not cause any injustice to the parties in an arbitration and where if an injunction is not granted the continuance of the arbitration would be oppressive, vexatious, unconscionable or an abuse of process. The Federal Court in *Jaya Sudhir a/l Jayaram v. Nautical Supreme Sdn Bhd*

& Ors [2019] 7 CLJ 395; [2019] 5 MLJ 1 approved the higher threshold test as stated in *J Jarvis and Sons Ltd v. Blue Circle Dartford Estates Ltd* to injunct an arbitration as follows:

> The J. Jarvis line of cases, parties seeking an injunction to restrain arbitration proceedings are the contracting parties to the arbitration agreement. This feature and distinction are crucial. In such cases, where a party to arbitral proceedings seeks to restrain the continuance of the arbitration proceedings a higher or different test or threshold imposed would be a logical and sensible requirement given the contractual obligations entered into by the party seeking to restrain the arbitral proceedings.

[50] Learned counsel for Telekom argued that Telekom has a statutory right to immediately apply to set aside an award on liability under s. 37 of the AA 2005 without waiting for the assessment of damages to be heard. Obnet's insistence on assessing damages without an award of liability is, therefore, a plain denial of Telekom's rights under the Act.

[51] We have given our utmost consideration to the submissions of learned counsels as well as the authorities cited, and we have carefully perused the grounds of judgment of the learned judge we are satisfied that the balance of convenience lies in favour of Telekom to safeguard their rights under the Act.

[52] The arbitrator had delivered his decision on liability and must provide as mandated by the Act a written award before commencing the assessment of damages. We agree with the submissions of learned counsel for Telekom that without an award on liability, it would be a plain denial of Telekom's rights under the AA 2005. An interim injunction is, therefore, necessary to restrain Obnet from taking any further steps to proceed with the arbitration proceedings and that the arbitration proceedings be stayed pending the issuance of a written award.

Conclusion

[53] Having carefully considered the submissions and authorities of all parties and based on the aforementioned reasons and in the light of the above settled principles, we found merit in the issues raised by the appellant. We, therefore, allow the appeal with costs to Telekom as the appellant. We set aside the decisions of the Court of Appeal and the High Court.

[54] We answer the question posed before us in the following manner. Where an arbitral tribunal, in this case, the arbitrator, directs proceedings to be bifurcated, an oral pronouncement on liability by the arbitrator is a decision on the substance of dispute between the parties. However, it does not entitle the arbitrator to proceed with the determination of quantum until a written award on liability is given as mandatorily required under the AA 2005. We hereby make the following orders as prayed by the appellant in the OS (encl. 34 in the common core bundle vol. 1):

(i) the oral decision delivered by the Arbitral Tribunal on 26 June 2020 in respect of Telekom's and Obnet's liability is invalid; and

(ii) Obnet (whether by themselves, their officers, directors, employees, servants, principals or agents, nominees or otherwise) be forthwith restrained form taking any further steps, either directly or indirectly, to proceed with the arbitration proceedings between Telekom and Obnet, until the arbitrator duly publishes an award on its determination on the issue of liability of the parties in respect of the claim and counterclaim, in compliance with ss. 2 and 3 of AA 2005 and art. 34 of UNCITRAL Arbitration Rules, adopted by the Rules for Arbitration of the Kuala Lumpur Regional Centre for Arbitration.

[55] Given that the arbitration in this appeal commenced in 2016 and the decision on liability was pronounced orally in 2020 it is necessary and appropriate that the arbitrator publish the award on liability in writing as required under the AA 2005 as soon as reasonably possible. The proceedings on the assessment of damages is, therefore, stayed until the arbitrator publishes the written award on liability.

[56] After hearing parties on the issue of costs we ordered costs of RM150,000 to be paid to Telekom by Obnet subject to allocatur. The sum of RM80,000 paid by Telekom as costs in the courts below to be refunded by Obnet to Telekom within 14 days from the date of this order.

[57] My learned brothers, Abdul Rahman Sebli, Chief Judge of Sabah and Sarawak, and Abdul Karim Abdul Jalil FCJ have sight of the judgment in draft, concur with the reasons given and the conclusions reached.